



ADRP Conference Summary

Review 124 – Deep Drawn Stainless Steel Sinks exported from the People’s Republic of China

Panel Member	Paul O’Connor
Review type	Review of Minister’s Decision
Date	16 April 2020
Participants	Charles Zhan and Macky Markar of Moulis Legal
Time opened	11:00 AEST
Time closed	11:50 AEST

Purpose

The purpose of this conference was to obtain further information in relation to the application before the Anti-Dumping Review Panel (Review Panel) lodged by Moulis Legal (Moulis) on behalf of Zhuhai Grand Kitchenware Co., Ltd (Zhuhai Grand) in relation to Deep Drawn Stainless Steel Sinks exported from the People’s Republic of China.

The conference was held pursuant to section 269ZZHA of the *Customs Act 1901* (the Act).

In the course of the conference, I asked the representatives from Moulis to clarify an argument, claim or specific detail contained in Zhuhai Grand’s application to the Review Panel. The conference was not a formal hearing of the review.

I have only had regard to information provided at this conference as it relates to relevant information (within the meaning of section 269ZZK(6) of the Act). Any conclusions reached at this conference are based on that relevant information. Information that relates to some new argument not previously put in an application or submission is not something that the Review Panel has regard to, and is therefore not reflected in this conference summary.

At the time of the conference, I advised Moulis’ representatives:

- That the conference was being recorded and transcribed by Express Virtual Meetings Pty Ltd, and that the recording would capture everything said during the conference.
- That the conference was being recorded for the Review Panel to have regard to when preparing a conference summary. The conference summary would then be published on the Review Panel’s website.
- Any confidential information discussed during the conference would be redacted from the conference summary prior to publication.



Prior to the conference, participants were provided with a copy of the Review Panel's Privacy Statement. The Privacy Statement outlines who the conference recording and transcript may be disclosed to. The Privacy Statement is available on the Review Panel's website [here](#). The representatives from Moulis indicated that they understood the Privacy Statement and consented to:

- The recording of this conference; and
- The recording being dealt with as set out in the Privacy Statement.

Prior to the conference the Panel provided Moulis I with a list of points for discussion.

Discussion

Clerical error

1. One of Zhuhai Grand's Grounds for Review alleges a clerical error on the part of the Anti-Dumping Commission (ADC). In the latter stages of the inquiry, the ADC provided Zhuhai Grand with calculations suggesting a dumping margin of 13.2%. However, REP 517 and ADN 2020/003 stipulated a slightly higher dumping margin of 13.4%.
2. ADC representatives explained in a conference held on 15 April 2020 that the dumping margin calculations provided to Zhuhai Grand were in the form of a working draft and that Zhuhai Grand was advised the calculations were to be subject to an internally assurance process. Accordingly, the calculations were not to be regarded as indicative of the final determination of the dumping margin. The quality assurance process identified a minor change to the dumping margin, a 0.2% increase to 13.4%.
3. Zhuhai Grand was not advised of this adjustment as it was considered by the ADC to be immaterial and there was insufficient time remaining to complete the inquiry within which to provide Zhuhai Grand with a further opportunity to comment.
4. Moulis acknowledged receipt of an email from the ADC dated 29 January 2020, which provided the normal value calculations. Moulis acknowledged the email stated the calculations were still subject to review and that if there were material changes Zhuhai Grand would be advised. Moulis noted that such an opportunity was not provided is disappointing.



5. Following the conference the Panel arranged for a copy of the ADC's final dumping margin calculations to be forwarded to Moulis.

Applicability of Program -1.

6. Zhuhai Grand's application to the Panel challenges the relevance of a subsidy provided by the Government of China and known as *Program-1 Raw materials*, especially when REP 517 concluded that Zhuhai Grand did not derive any benefit from that program.
7. The ADC's representatives have confirmed that Zhuhai Grand had not received any benefit under that program. However, for those exporters who had received a benefit, the external benchmark of the North American and European prices was used to quantify the extent of that benefit.
8. Moulis indicated it focused upon the ADC's reference to the program which it noted was also relied upon in the initial investigation. Moulis disagreed with the approach adopted in REP 517 where the program was a relevant consideration in both the dumping and subsidy determinations, such an approach was in its view incorrect.
9. Noting the ADC's comments that the program was not relevant to the current inquiry, Moulis noted the main issue in the review was the use of the foreign benchmark rather than reliance upon Zhuhai Grand's cost of production data. In the initial investigation the program had been the basis for the adoption of the foreign benchmark.

Model control code (MCC) methodology related adjustment

10. Moulis noted the ADC representatives' comments to the Panel regarding the application of model control codes (MCCs) for comparison purposes and the application of adjustments are not clear. Moulis maintains normal value calculations were not based upon all domestic sales of like goods. The ADC did not determine a single weighted average for all domestic and all export sales and compare the two.
11. Moulis noted the ADC identified two categories of exported goods. Those which could be aligned through the MCC approach with a sufficient volume of the domestic sales. The second category comprised exported goods which did not align with



sufficient domestic sales and which were compared to the next comparable MCC.

Moulis indicated it is the ADC's approach to this second group which it seeks to challenge.

12. Moulis argued the approach the ADC ought to have adopted was to simply compare the cost of production of the exported model with the cost of production of the domestic surrogate model for purposes of normal value adjustments. However, what the ADC did was to compare the cost of production of the exported model with the cost of production of an exported surrogate model, instead of the domestic costs of production of the surrogate model.

13. Moulis indicated it would lodge a submission expanding on its arguments in relation to the comparisons and adjustments.

Use of costs in the country of export

14. Moulis does not disagree that section 269TAA and Article 2.2.1 of the *Anti-Dumping Agreement* do not specify the only circumstances in which domestic sales can be considered or treated as being in the ordinary course of trade.

15. In REP 517 Moulis noted the ADC expressly stated it was applying the method prescribed in section 269TAA and Regulation 43 to determine the applicable costs of production. Accordingly, the ADC was required to determine the cost of production in China and to do so by reference to an external benchmark is not permissible as demonstrated in the recent World Trade Organization Dispute Panel decision regarding *Ammonium Nitrate*.

16. Moulis then referred to the recent Federal Court decision of *Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* which considered the legal meaning of the phrase "*the cost of production ... in the country of export*" in the context of section 269TAC(2)(c)(i). Moulis argues the Full Court's findings in that case, regarding the scope of the phrase, is equally applicable to the issue in dispute in this review.

17. However, the ADC's choice of North American and European prices as an external benchmark adopted costs which have nothing to do with China, therefore nothing to do with the costs in the country of export. Indeed, in this case, they went one step



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further to say that even costs in countries which are geographically proximate to China, would have been disqualified, because they are closer to China than Europe and America. Accordingly, there was no genuine consideration of the requirement to calculate the costs in the country of export. Nothing was done to the foreign benchmark or data to make sure it ultimately reflected the costs in the country of export.

18. Moulis noted that in the present case, the ADC did not make a finding in relation to a particular market situation. So that means the ADC actually agrees there was nothing wrong with the Chinese prices and the domestic market for normal value purposes. Therefore, if anything, it is even more imperative, for ordinary course of trade purposes, to actually use the costs of the particular exporter in the country of export, in order to determine if sales were made as part of the ordinary course of trade.

Paul O'Connor

Panel Member

Anti-Dumping Review Panel

22 April 2020